



## BLM Ignored Fracking Risks In Calif. Lease, Enviros Say

By Beth Winegarner

Law360, San Francisco (January 15, 2013, 8:19 PM ET) -- The Center for Biological Diversity urged a California federal judge Tuesday to rule that the federal government violated the National Environmental Policy Act by failing to assess the risks of fracking before leasing 2,700 acres of California land for oil and gas extraction in 2011.

The Center for Biological Diversity and the Sierra Club argued that the government should have studied the potential environmental effects of hydraulic fracturing before leasing the land in Monterey and Fresno counties, rather than relying on projections that the oil companies would install a single well on 1 acre as proposed. But attorneys for the U.S. Bureau of Land Management said such studies would be “premature and overbroad,” considering that its tenants hadn’t proposed fracking on the land.

“The question is whether the Bureau of Land Management must, prior to issuing any oil and gas lease, ignore its expertise and rely on speculative assumptions,” Romney Philpott, an attorney with the U.S. Department of Justice, said Tuesday. “They’re asking for an exhaustive analysis of [scenarios] that may or may not occur.”

In 2006, when the BLM was beginning to assess proposed fuel development on the California lands, it worked from a guidelines established in the mid-1990s, before fracking was a major method of extracting fuel, Cummings said. In the past five years, with the introduction of “slick water” chemicals that enable hydraulic fracking, the practice is booming — and many oil companies are using it to mine the land, even though those plans aren’t in their lease agreements, he argued.

In light of that change, the BLM should have performed a more intensive environmental analysis of the California project and lease, “rather than approving [it] by rote,” he said.

“This is not some ministerial, ‘OK, check the box’” process, Philpott argued, pointing to a trio of environmental studies performed by the BLM before the lease was approved. He agreed if there were evidence of a fracking boom in

California, that the government should have taken it into account, but argued that the evidence instead suggests oil and gas companies aren’t increasing their use of fracking.

Cummings shot back, arguing that that’s because companies are reporting the practice on a voluntary basis, rather than being required to do so.

U.S. District Court Magistrate Judge Paul Singh Grewal told the parties he would issue his ruling soon, but didn’t indicate which side he might take.

The Center for Biological Diversity and the Sierra Club launched their attack on the BLM in California federal court in late 2011, shortly after the California land deal went through. Their lawsuit claims the BLM violated the National Environmental Policy Act and Mineral Leasing Act by not studying how potential fracking on the contested land could affect local groundwater and endangered species such as the San Joaquin kit fox and the blunt-nosed leopard lizard.

Fracking has been associated with more than 1,000 cases of water contamination, particularly from chemicals used in the practice, such as benzene and toluene, the lawsuit said.

The Center for Biological Diversity and the Sierra Club are represented by Bredan R. Cummings and David Robert Hobstetter, staff attorneys for the CBD.

The U.S. Bureau of Land Management is represented by Romney Sharpe Philpott with the U.S. Department of Justice.

The case is Center for Biological Diversity and Sierra Club v. The Bureau of Land Management et al, case number 5:11-cv-06174, in the United States District Court for the Northern District of California.

--Editing by Richard McVay.